



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1998

Ms. Marva M. Gay
Assistant General Counsel
Office of the Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-1313

Dear Ms. Gay:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas Open Records Act. Your request was assigned ID# 115377.

Harris County (the "county") received two requests for information. The requests are for certain information pertaining to the death of an inmate at the county jail. You submitted to this office for review records labeled as Exhibit C that you indicate are responsive to the requests. You assert that these records are protected from disclosure pursuant to section 552.103(a) of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a). Open Records Decision No. 638 (1996) concluded that a governmental body could show that litigation is reasonably anticipated if it has received a claim letter and also represents to this office that the letter is in compliance with the notice requirements of the Texas Tort Claims Act (the "TTCA"), Civ. Prac. & Rem. Code § 101.001, *et seq.* You submitted to this office a copy of a letter from an attorney representing the deceased individual's family. You represent that this letter is a notice of claim letter sent in compliance with the notice provisions of the TTCA. We agree that the county has met the first prong of section 552.103 by showing that litigation is reasonably anticipated.

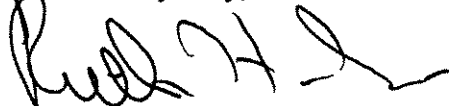
We have reviewed the records at issue and, while we agree that the records are related to the litigation, many of these records may not be withheld from disclosure under section 552.103(a). Included in Exhibit C are medical records, release of which is subject to the provisions of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes rather than chapter 552 of the Government Code. Section 5.08(j)(1) of article 4495b provides for release of medical records upon a patient's written consent, or upon the written consent of a "personal representative" if a patient is deceased, as long as the consent in either case specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 552.103(a) is inapplicable to the medical records, which may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

The requestor asked for "all incident reports" and you submitted information about offenses involving the deceased individual. Although a request for all incident reports involving a named individual would generally implicate that individual's privacy interests, an individual's right of common-law privacy is a personal right that does not extend past that individual's own death. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981) at 1. Additionally, the requestor is an attorney who indicates he is representing the interests of the family and estate of the deceased individual. Although you did not submit complete incident report forms to this office for review, front page offense report information must be released. Open Records Decision No. 597 (1991) (front page offense report information may not generally be withheld from disclosure under section 552.103(a)).

We agree that the remaining records at issue are related to the anticipated litigation and may generally be withheld from disclosure under section 552.103(a). However, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, you may only withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 115377

Enclosures: Submitted documents

cc: Mr. Frank J. Ross
4810 Carolina
Houston, Texas 77004
(w/o enclosures)